

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2746 OF 2005**

Awdesh Vasistha Tiwari & Ors. ...Petitioners

Vs.

The Chief Executive Officer,
Slum Rehabilitation Authority & Ors. ...Respondents

Shri A.Y. Sakhare, Senior Advocate with Shri S.M.
Gorwadkar and B.G.Saraf for the Petitioners.

Shri V.A. Thorat, Senior Advocate for R.No.7.

Shri R.M. Kadam, Advocate General with Shri G.D.
Utangale for the Respondent No.1-SRA.

Shri Pradeep Jadhav, A.G.P. for R.Nos.2,3 & 6.

Shri S.G. Surana for the Respondent No.4.

Shri A.K. Abhyankar, Senior Advocate with Shri M.U.
Pandey for the Respondent No.5.

CORAM : H.L. GOKHALE AND ABHAY S. OKA, JJ.

DATE ON WHICH HEARING CONCLUDED : FEBRUARY 13, 2006

DATE ON WHICH JUDGMENT IS PRONOUNCED: APRIL 26, 2006

ORAL JUDGMENT (Per A.S.Oka,J.):

1. Rule. The Respondents waive service. By
consent of the learned Counsel appearing for the
parties taken up for final hearing forthwith.
Contesting Respondents have filed their replies and
the Petitioners have filed their rejoinder.

2. Certain important issues have been raised in
this Writ Petition under Article 226 of the
Constitution of India regarding the procedure to be
followed by the Slum Rehabilitation Authority (for

short SRA) while considering the Applications made by the owners/ developers/ proposed co-operative societies of slum dwellers. With a view to understand the controversy involved in this Petition, a brief reference will have to be made to the facts of the case.

3. The Petitioners claim that the Petitioner No.20 is a proposed Co-operative Housing Society formed by hutment dwellers residing on plot of land bearing city survey Nos.522 to 526, 528 to 532, 533(PT), 534 to 537 admeasuring about 15,600 Sq.mts. situated at village Malad, Taluka Borivali, Mumbai 400 097. The said plot of land admeasuring 15,600 Sq.mts. is hereinafter referred to as 'the area of the Petitioners'. An Application was made by the Petitioner No.20 (proposed Society) on 08th November, 2004 to the SRA for grant of approval of the Slum Development Scheme under Regulation 33(10) of the Development Control Regulations for the City of Mumbai, 1991 (hereinafter referred to as D.C.Regulations). At the time of submitting the Application, the claim of the Petitioner No.20 and the Respondent No.7-developers appointed by the Petitioner No.20 was that there were 326 slum dwellers in the area of the Petitioners and the Petitioner No.20 had obtained consent of more than 70% of the eligible hutment dwellers. Later on the Petitioner No.20

claimed that it had support of more hutment dwellers. It must be noted here that a larger plot including the area of the Petitioners had already been declared as a slum under section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971 (hereinafter referred to as the Slum Act). The area of the larger plot is 27,402.2 Sq.mts which is hereinafter referred to as 'larger area'. The larger area was acquired under section 14(1) of the Slum Act on 19th July, 1999. The challenge in this Petition is to the sanction of one composite Slum Rehabilitation Scheme in favour of the Respondent Nos.4 and 5 in respect of the entire larger area including the area of the Petitioners. The challenge is also to the communication dated 02nd August, 2005 by which the Application made by the Petitioner No.20 for sanction of Rehabilitation Scheme in respect of the area of the Petitioners was rejected.

4. The case of the opposing fourth and fifth Respondent in short is that the fourth Respondent, which was a proposed society, applied to the third Respondent-Deputy Collector on 30th May, 1989 for acquisition of the larger area under section 14 of the Slum Act. Their case is that a Charitable Trust was the owner of the larger area. The said Charitable Trust applied to the Charity Commissioner for sanction of sale of area admeasuring 23,322 Sq.mts. out of

larger area in favour of the Respondent No.4-Society. The Charity Commissioner by order dated 25th April, 1994 accorded sanction under section 36 of the Bombay Public Trusts Act, 1950 to the proposed transaction of sale. On 29th October, 1994, the fourth Respondent -Society was registered. The area of operation of the fourth Respondent-Society is a large plot including the larger area. According to the case of the fourth Respondent, on 19th July, 1999 the order of acquisition of the larger area was passed under section 14(1) of the Slum Act and thus the larger area vested in the State Government from that date. The case is that repeatedly fourth Respondent showed willingness to pay the compensation which will be awarded in favour of the owners on account of acquisition. On 23rd February, 2003 the fourth Respondent appointed fifth Respondent-Company as developer of the larger area and the fourth Respondent on 29th March, 2003 applied to the third Respondent Deputy Collector for issuing Annexure-II as per draft submitted therewith. The said Application was followed by further Application for grant of lease in respect of the larger area in favour of the fourth Respondent. It is the case of the fourth Respondent that some of the Petitioner Nos.1 to 19 entered into an agreement with the fifth Respondent-developer appointed by the fourth Respondent for grant of alternative accommodation. On 09th December, 2004,

the fifth Respondent made an Application to SRA for sanction of a Slum Rehabilitation Scheme. It is, however, material to note that the said Application was not signed by any one on behalf of the fourth Respondent. Annexure I and III were not forwarded alongwith that Application. The SRA referred draft Annexure II submitted by both the Petitioner No.20 as well the Respondent No.5 to the Respondent No.2-Additional Collector, Encroachment for simultaneous verification. Ultimately on 08th July, 2005, the second Respondent issued Annexure-II in favour of the fourth Respondent and consequently SRA rejected Application made by the Petitioner No.20 by communication dated 02nd August, 2005. On 16th July, 2005, the Architect of the fourth Respondent submitted a proposal for sanction of the scheme and after scrutiny on 03rd August, 2005, computer number was assigned to their file. On 25th November, 2005 SRA sanctioned the scheme in favour of the fifth Respondent. We may add that no construction of this project has started so far.

5. Shri Sakhare, the learned Senior Counsel appearing for the Petitioners submitted that as per the guidelines issued by the SRA, owner and/or proposed co-operative society and/ or the developer has to apply for sanction of scheme under regulation 33(10) of D.C.Regulations to SRA alongwith duly

filled- in Annexure-I, Annexure-II and Annexure-III and other requisite documents. He pointed out that as per the guidelines, and after preliminary scrutiny by the engineer of SRA, fees are accepted if all documents are filed alongwith the proposal and thereafter a computer number is given. He pointed out that such Application came to be made on behalf of the Petitioner No.20 on behalf of its members and developer appointed by the Petitioner No.20 of the SRA on 08th November, 2004. The SRA accepted the scrutiny fee and gave computer number to the file. He pointed out that the fifth Respondent applied to the SRA subsequently on 09th December, 2004 for sanction of a scheme in respect of larger area including that of the Petitioners, but without forwarding Annexure I, Annexure II and Annexure-III. He pointed out that said Application was not signed by any one on behalf of the fourth Respondent-Society. He submitted that as per the guidelines, Application has to be made only to SRA and that too alongwith all the three Annexures duly filled. These three Annexures are to be simultaneously processed by different authorities. Annexure-II is the list of those hutment dwellers who are eligible to receive tenements in re-developed property as per the provisions of Appendix IV to the D.C.Regulations. The Annexure-II is required to be approved by the competent authority which in the present case is the Additional Collector. He

submitted that regular application containing all the three annexures was filed by the fourth and fifth Respondent only on 03rd August, 2005 which was then assigned a computer number. He submitted that considering the scheme as reflected from the provisions of D.C.Regulations and the Guidelines issued by SRA, application for sanction of Annexure-II cannot be entertained directly by the competent authority. Besides, the Application made by the Petitioners was prior in time than the application made by the fourth and fifth Respondent. He submitted that without considering and deciding on the merits of the application of the Petitioner No.20 and without passing final order on the said application, the application made by the fourth and fifth Respondent could not have been processed and considered by the SRA. He submitted that no proposed society can have a better right since the ultimate object of the scheme is only to allot area admeasuring 225 Sq.ft. to every eligible slum dweller through the instrumentality of a society of 70% of the slum dwellers in an area. Therefore the Application made by any proposed society for sanction of SRA Scheme must be considered on what is known as "first come first serve" basis. It is only when the first application fails that an application of another society can be examined.

6. Shri Sakhare further submitted that as per the

guidelines issued by the SRA for processing of applications, it is necessary for the Society and developer to file a complete application including Annexure-I, Annexure-II and Annexure-III in prescribed form. He submitted that the procedure contemplates that all three Annexures are to be processed simultaneously. He pointed out that the SRA committed an error by entertaining the application dated 09th December, 2004 submitted by the fifth Respondent. Relying upon the record produced by the SRA, he pointed out that the process of consideration of the proposal of fourth Respondent-Society was started on the basis of the application dated 08th December, 2004 submitted by the fifth Respondent-builder. He pointed out that the said Application is incomplete as Annexure-I, Annexure-II and Annexure-III were not forwarded with application. He pointed out that regular application was made in prescribed form by the fourth Respondent to the first Respondent only on 03rd August, 2005. He submitted that before considering the application of the fourth and fifth Respondent, the application made by the Petitioner which was prior in time ought to have considered and fully examined by the SRA. Only on the failure or rejection of application of the Petitioner No.20 that the application of the fourth and or fifth Respondent could have been considered. This is because an Applicant-society has to have support of 70% of the

slum dwellers. The occasion to examine the application of another society therefore arises only if the first applicant fails to muster support of 70% of the slumdwellers, since at a time both the societies will not have 70% members. He has addressed us on several factual aspects of the matter.

7. Shri. V.A. Thorat, the learned senior counsel appearing on behalf of the developer of the Petitioner No.20 pointed out that the fourth Respondent Society has been registered in the year 1994 and the letter of intent has been issued in the name of a proposed co-operative society. He pointed out the discrepancies in the name of that society. He submitted that the said society registered in the year 1994 is not shown to be a society formed by more than 70% eligible hutment dwellers and therefore the said society could not have applied for grant of permission under D.C. Regulation 33(10).

8. Shri Abhyankar, the learned senior counsel appearing for the fifth Respondent-contesting developer and Shri Surana appearing for the fourth Respondent-society have taken us through compilations of documents filed on record. The gist of their submission is that the procedure for submitting applications for grant of permission under the scheme as per Regulation 33(10) kept on changing from time to

time. Initially the procedure was that the Applicant must first get Annexure-II approved by the competent authority and only thereafter the application was required to be filed before the SRA. Shri Abhyankar submitted that accordingly an application was made by the fourth Respondent on 29th March, 2003 to the competent authority for issuance of Annexure II and the entire process of grant of approval to Annexure-II was started on the basis of the application. According to him that was the reason why the SRA directed the competent authority to consider the Annexure-II submitted by both the Petitioner No.20 and the fourth Respondent simultaneously without accepting regular application from the fourth Respondent. He submitted that after filing of regular application before the SRA, the Petitioner No.20 kept on improving its case regarding the total hutment dwellers supporting it. He pointed out that though the Annexure-II of both the societies were sent to competent authority simultaneously, for verification of the support, after carrying out door to door survey, both the applications have been independently considered on merits by the competent authority. Thereafter it was found as a matter of fact that more than 70% slum dwellers have consented in favour of the fourth Respondent to implement the scheme. He pointed out that the scheme submitted by the fourth Respondent relates to the larger area which is the area acquired

under section 14 of the Slum Act and the application of the Petitioner No.20 was with reference to a smaller area. He referred to the notification issued under section 14 of the Slum Act and stated that the larger area was acquired for implementation of Slum Rehabilitation Scheme and the acquisition process was started and completed at the instance of fourth Respondent-Society.

9. Shri Surana appearing for the contesting

fourth Respondent-society pointed out that the fourth Respondent-Society had shown the willingness to pay the compensation payable to the owners on account of the acquisition of their land. Shri Abhyankar and Shri Surana pointed out that the fourth Respondent-Society is following the matter of re-development of slum on larger area right from the year 1989. They pointed out the defects in the application made by the Petitioner No.20. Both of them pointed out that the Petitioner No.20 had also first approached the competent authority for grant of approval to the Annexure-II and only subsequently an application was made to the SRA. A submission was made that after a regular survey, the competent authority has found that the fourth Respondent is supported by more than 70% of the slum dwellers on the larger area and no interference was called for with the findings of fact recorded by the competent

authority on the basis of a regular survey. Shri Abhyankar submitted that the Petitioners have not challenged the decision taken in the meeting dated 25th August, 2005 held in the office of the Minister of State for Housing.

10. The learned Advocate General appearing for the SRA and Shri Jadhav appearing for competent authority submitted that both the applications have been dealt with by the authorities in fair manner. Both the applications were processed by a due procedure and the fourth Respondent was found to be eligible. Both of them submitted that no fault can be found with the decision making process of the competent authority and the SRA. Both the counsel have fairly shown the original record available with the SRA and the competent authority. Both of them accepted that no effective steps have been taken on the basis of letter of intent issued to the fourth and fifth Respondent and hardly any steps have been taken on the basis of letter of intent.

11. We have carefully considered the submissions. It appears that the fourth Respondent-Society was duly registered under the Maharashtra Co-operative Societies Act of 1960 on 29th October, 1994. However, there is nothing on record to show that the fourth Respondent-Society was formed with the object of

implementation of scheme under Regulation 33(10) of the D.C. Regulations. There is nothing on record to show that 70% of the eligible slum dwellers on the larger area were the members of the fourth Respondent-Society at the time of formation of the society. The area of operation of the fourth Respondent is stated to be a bigger area of 44,000 Sq.mts and the object is to construct flats thereon for allotment to its members. It does appear that the fourth Respondent was making constant efforts to acquire the property. Initially, the fourth Respondent-Society agreed to purchase the larger area from the Trust which was the original owner of the property in question. Thereafter, regular correspondence was made by the fourth Respondent-Society with the State Government and other authorities for acquisition of the larger area. Ultimately, the State Government acquired the larger area under section 14(1) of the Slum Act. However, we must note that the scheme of the Slum Act does not permit acquisition for the benefit of private party as provided under Chapter VII of the Land Acquisition Act, 1894. Under sub-section (1) of section 14 of the Slum Act, immediately on publication of notification for acquisition, the property which is the subject matter of notification vests in the State Government. In the present case, the said notification was published in July 1999 and thus from the date of

publication of the notification the entire land vests in the State Government. In view of this position, neither the Petitioner No.20 nor the Respondent No.4 can claim to have any legal right, title and interest in respect of the larger area.

12. Now the question before us is the manner in which the scheme under Regulation 33(10) should be implemented. The entire case will have to be examined in the perspective of rights of the slum dwellers. Section 3Y(1) of the Slum Act provides that the State Government or any officer generally or specially authorised by it is required to issue a photopass to the actual occupier of the dwelling structure in slum which is in existence on or prior to 01st January, 1995. Section 3X(c) provides that "Protected occupier" means an occupier of dwelling structure who holds a photopass. sub section 1 of section 3Z provides that save as provided in sub section 2 of section 3Z no protected occupier shall be evicted from a dwelling structure. Sub-section (2) provides that the State Government in larger public interest can evict protected occupier from his dwelling structure subject to condition of relocating and rehabilitating the protected occupier in accordance with the scheme or schemes prepared by the State Government in this behalf. Section 3X(a) defines a "dwelling structure" to mean a structure used as a dwelling or otherwise

and includes an out-house, shed, hut or other enclosure or structure, whether of bricks, masonry, wood, mud, metal or any other material whatsoever. Thus, occupants of the structures in slum area become protected occupiers provided as on 01st January, 1995 they are in occupation of a dwelling structure.

13. Regulation 33(10) of D.C.Regulations provides for a scheme for rehabilitation of slum dwellers. Under such rehabilitation scheme, there is a provision for providing a tenement in exchange of a dwelling structure whose inhabitants' names and structures appear in the electoral roll prepared with reference to 01st January, 1995. Clause (i) of Appendix IV of D.C. Regulation lays down that hutment dwellers in the slum or on pavement who are eligible in accordance with the provisions of D.C.Regulation 33(10) shall be entitled in exchange for their structure a residential tenement free of cost having carpet area of 225 sq.ft. including balcony, bath and water closet, but excluding common free of costs. Thus, the right of a hutment dweller who is in possession of a hutment on an area to which the Scheme is made applicable is for a tenement admeasuring 225 sq.ft. in exchange of the hut irrespective of the area of the hut. Thus, an individual hutment dweller gets this limited right apart from right to seek protection from eviction under Section 3Z(1) of the Slum Act. However, there

is nothing in the scheme of D.C. Regulation 33(10) that an individual slum dweller gets a right to decide which Society or which developer should implement the scheme.

14. Appendix IV of Regulation 33(10) provides that the land on which rehabilitation component is constructed will be leased to co-operative housing society of the slum dwellers on thirty years lease. Clause 2.1 of Appendix IV provides that the proposal for each slum rehabilitation project shall be submitted to Slum Rehabilitation Authority alongwith all necessary documents, no-objection certificates, and the plans as may be decided by the Slum Rehabilitation Authority from time to time. The SRA has issued Guidelines for implementation of SRA scheme. Clause 2 of the procedure incorporated in the said guidelines provides that 70% or more of the eligible slum dwellers in a slum or on pavement in a viable stretch at one place have to show their willingness to join Slum Rehabilitation Scheme and come together to form a proposed co-operative housing society. Clause 3 of the guidelines further provides that the chief promoter, office bearers and the members of the proposed society should collect the documents such as 7/12 extract and the Property Registration card of the plot on which the slum is situated. After collecting necessary documents, they

should then get the plot surveyed/measured and prepare map of the plot showing slum structures thereon. While undertaking the survey, they should collect the information of the proposed members/slum-dwellers and fill up the self prepared Annexure-II prescribed by SRA. Annexure-II contains details of structures occupied by the slum-dwellers, their number and type of structures such as residential, industrial, commercial, amenity structures etc. and the list of eligible and ineligible occupants. The guidelines record that earlier procedure was that the promoter/co-operative housing society should first approach competent authority for obtaining certification of Annexure-II before they can put an application for grant of scheme to the SRA. However, it is recorded that such procedure is discontinued and now the procedure provides that Annexure-II format is required to be filled up by the promoter/ co-operative housing society for submitting the same alongwith proposal for sanction to SRA.

15. Competent Authorities for certifying Annexure

II have been notified. In case of the lands vesting in the State Governments Revenue Officers such as Additional Collector, Deputy Collector have been nominated. In case of lands vesting in the Municipal Corporation, the Municipal Officers have been nominated. The guidelines further contemplate that

after obtaining name reservation of the proposed society, step should be taken to search a competent developer who will act as promoter of the scheme. The scheme provides that instead of appointing a developer, the society itself or a NGO can implement rehabilitation scheme as a promoter. After appointing a promoter, agreements are required to be executed by and between the promoters and the members. Thereafter, the promoter has to appoint an architect in consultation with the proposed co-operative housing society. The Architect is entrusted with the work of preparation of plans. The procedure contemplates that all required documents such as building plan, layout plan, property register plan alongwith Annexure-I, self prepared Annexure-II and Annexure-III should be submitted to the SRA by the architect alongwith application for sanction of Slum Rehabilitation Scheme. Annexure-I gives details of ownership of land, details of plot area, existing hutments, extent and type of reservations, amenities, FSI available etc. The prescribed format shows that Annexure-I is to be signed by architect and owner/ chief promoter of the Society. Annexure-II is to be signed by the chief promoter of the Society/ owner/ developer/ NGO. Annexure-III is related to financial capability of the developer to execute SRA scheme which is required to be signed by the developer and architect. Clause No.11 of Part IV of the Guidelines on the Procedure

prescribes that after a pre-scrutiny by designated engineer of SRA with a view to ensure completeness of the proposal so far as a documents are concerned, proposals are accepted and computer file number is allotted to the scheme on payment of scrutiny fees. Upon the acceptance of the proposal, the scrutiny of Annexure-I, Annexure-II and Annexure-III starts simultaneously and after scrutiny of the Annexures by different authorities, a letter of intent is issued. From the procedure prescribed, it is clear that a comprehensive application containing plans and other requisite documents, Annexure-I, Annexure-II and Annexure-III shall be submitted by the architect to the SRA and after ensuring that all documents are filed with the proposal a computer number is given to the file and only thereafter scrutiny of all the three Annexures starts simultaneously.

16. Shri Abhyankar was right to some extent in pointing out that at one stage procedure prescribed was that Annexure-II should be got approved first from the competent authority and only thereafter applications used to be accepted by the SRA for sanction. That is the reason why Shri Abhyankar placed reliance on application dated 29th March, 2003 submitted by the fourth Respondent to the competent authority for issuance of Annexure-II. We had benefit of going through original record of SRA as well as of

the competent authority. Perusal of the record maintained by the competent Authority shows that no further steps have been taken on the basis of the application dated 29th March, 2003. Perusal of the record of the SRA shows that the entire process of verification of Annexure-II of the fourth Respondent was set in motion only on the basis of application made by the fifth Respondent in the form of a letter to the SRA which was submitted on 09th December, 2004. It is pertinent to note that there is nothing on record to show that alongwith the said application dated 09th December 2004 any of the requisite documents such as building plan and Annexure-I, Annexure-II and Annexure-III were submitted to the SRA. That is the reason why we find that there was no scrutiny of the said application dated 08th/ 09th December, 2004 and computer file number was not assigned to the proposal.

17. From the file of the SRA it appears that after the said application was received, Executive Engineer-III of the SRA prepared a noting. The said noting refers to endorsement made by the Chief Executive Officer-SRA on the representation of fifth Respondent-builder to accept the proposal in respect of larger area. The said note refers to a regular application made on 08th November, 2004 by the architect appointed by the Respondent NO.7 on behalf

of the Petitioner No.20. The note records that certain city survey numbers are common in both the proposals. The note refers to discussion with architects of both the builders. The note proposes that "In view of the above, if the Chief Executive Officer (SRA) agrees Annexure-II prepared by M/s Shah Housing Corporation Pvt. Ltd. will be accepted and forwarded to the Annexure-II issuing authority without accepting the proposal". The file shows that the Chief Executive Officer made a noting "We may get the correct position verified from the Annexure-II issuing authority." A letter dated 01st January, 2005 was sent by the SRA to the additional collector (competent authority). It is stated in the letter that earlier a proposal was received from the Petitioner No.20 by the SRA and subsequently application was received from the fifth Respondent for sanction of the Annexure-II by the Engineering Department. The said letter states that the Chief Executive Officer of the SRA has directed that the proposal of the fourth Respondent should be forwarded to the competent authority and the competent authority should verify as to which society from amongst the Petitioner No.20 and the Respondent No.4 has membership of 70% of the slum dwellers.

18. The order dated 08th July, 2005 of the Competent Authority passed thereafter shows that proposals of the Petitioner No.20 and the Respondent

No.4 for sanction of Annexure II are considered simultaneously by the competent authority and the competent authority came to the conclusion that out of 614 eligible hutment dwellers more than 70% of the hutment dwellers have supported the fourth Respondent. It appears that before the competent authority, the Petitioner No.20 also claimed to have support of more hutment dwellers than 322 which was mentioned in its original application submitted to the SRA. Thus, the entire machinery was set in motion on the basis of the Application dated 09th December, 2004 made by the fifth Respondent-builder. No steps have been taken on the basis of the Application of the fourth Respondent filed on 29th March, 2003. Only on the basis of Application dated 09th December, 2004 made by the fifth Respondent, the Executive Engineer of SRA made a note which was endorsed by the Chief Executive Officer of SRA. The letter dated 01st January, 2005 sent by SRA to the Competent Authority makes it very clear that Annexure-II of the Petitioner No.20 was forwarded to the Competent Authority on 03rd December, 2004 and action is initiated on the Annexure-II of the fourth Respondent only on the basis of the letter dated 09th December, 2004.

19. The file discloses that a regular application was made on behalf of the Respondent No.4 to the SRA alongwith Annexure-I, Annexure-II and Annexure-III in

August 2005 which was given computer number on 03rd August, 2005. Had the Annexure-II submitted by the Respondent No.4 been taken up for scrutiny on the basis of the application filed on 29th March, 2003, there would have been some substance in the submissions of Shri Abhyankar. However, files disclose that entire process was set in motion only on the basis of application made by the fifth Respondent to the SRA in December 2004 which was without any of the supporting Annexures as required. The said application is admittedly filed after computer number was assigned to the proposal of the Petitioner No.20. Only on the basis of the said application made in December 2004, Executive Engineer of the SRA prepared a proposal for suggesting simultaneous scrutiny of Annexure-II submitted by the Petitioner No.20 and the Respondent No.5. Thus, application dated 29th March, 2003 was not acted upon and the application which is acted upon is the application made in December 2004 by the Respondent No.5 which admittedly did not contain prescribed documents viz. Annexure-I and III. The said documents were filed alongwith a regular proposal only on 03rd August, 2005.

20. If the entire scheme under Regulation 33(10) is perused it is obvious that if 70% of the slum dwellers on a particular area come together and apply after formation of proposed co-operative housing

society, the said application has to be independently considered in accordance with law. The scheme does not contemplate simultaneous consideration of such an application made by a proposed society with an Application subsequently made by another proposed society relating to same land. The Applicant-society has to have 70% support which obviously two societies cannot have. The Application received first is to be processed first independently. If it fails to get 70% support, Second Application can be examined. The obvious intention is to avoid unhealthy competition between the different builders who are interested in supporting such societies. If such a course of simultaneous consideration is permitted to be adopted, unscrupulous persons and builders will try to win over the hutment dwellers who have supported the application made earlier by another society. Therefore, it is not desirable that an application which is earlier made and the one which is subsequently filed should be considered together. That is not the scheme provided under D.C.Regulation 33(10). It is necessary that the application which is first received in respect of a particular property by the SRA should be processed and decided first. After decision of the first Application, the second Application made by another society can be considered depending on the result of the first Application. The reason is that none of the societies have any right,

title and interest in respect of the property. Such a course will prevent the unhealthy competition between the builders or between the leaders of two groups in a slum area.

21. On this background when we come back to the present case, we find that regular application of the Petitioner No.20-Society was accepted on 08th November, 2004 and was numbered. The Chief Executive Officer committed an error by entertaining the application dated 09th December, 2004 made by the fifth Respondent-builder though it was not accompanied with Annexure-I, Annexure-II and Annexure-III and other prescribed documents. The scheme does not contemplate simultaneous consideration of two such applications. In our view, the application made by the Petitioner No.20 should have been considered first in accordance with law. If the scheme submitted by the Petitioner No.20 was not viable or did not have 70% support, the SRA could have always rejected the application of the Petitioner No.20 and considered the application of the Respondent Nos.4/5 provided a regular application was made as per the procedure. The regular applications of the Respondent Nos.4 and 5 was registered on 03rd August, 2005 i.e. before formal rejection of the application of the Petitioner No.20 and the applications of the Respondent Nos.4 and 5 was infact considered alongwith the application of

the Petitioner No.20. This was completely erroneous and illegal. The Respondent Nos.4 and 5 were seeking larger area. Even if the Application of the Petitioner No.20 was granted, the Application of the fourth Respondent could have been considered for remaining area.

22. The submission of the learned Counsel for the Respondents based on minutes of meeting held by the Minister of State for Housing cannot be accepted as the Minister had no power to interfere with the decision of SRA. The State has not exercised power under section 3K of the Slum Act in the present case.

23. In our view, the order rejecting the application of the Petitioner No.20 and the order granting approval to the scheme submitted by the fourth and fifth Respondent will have to be set aside. The application of the Petitioner No.20 will have to be considered afresh in accordance with law. We are passing this order as it is an admitted position that the fifth Respondent has not taken any steps on the basis of approval granted.

24. Hence, we pass the following order:

: O R D E R :

- i) The order dated 02nd August, 2005 passed by the SRA rejecting the application made by the

Petitioner No.20 is quashed and set aside and the application dated 08th November, 2004 submitted by the Petitioner No.20 is restored. The approval granted to the Rehabilitation scheme of the Respondent Nos.4 and 5 is quashed and set aside.

ii) The SRA will consider the application dated 08th November, 2004 submitted by the Petitioner No.20 for its 326 members in accordance with law. The exercise of consideration of the application shall be completed within a period of four months from today. The Application will be considered on the basis of the Annexure-II submitted alongwith the Application. The Competent Authority will make a fresh scrutiny of the said Annexure-II. If the application is rejected, the SRA will consider the proposal registered on 03rd August, 2005 of the Respondent Nos.4 and 5. If the application of the Petitioner is allowed, the SRA will be free to consider the application of the Respondent Nos.4 and 5 as regards the remaining area out of the larger area.

iii) All questions on the merits of the proposals submitted by the rival parties are expressly

kept open and it is for the S.R.A. to decide the same.

iv) Rule is made absolute in above terms with no orders as to costs.

. After the judgment is pronounced, Mr. Surana for the Respondent No.4 and Mr. Pandey for the Respondent No.5 seek a stay of this order for a period of four weeks. Mr. Saraf for the Petitioners and Mr. R.P. Singh for the Respondent No.7 object to this request. Even so, with a view not to deny an opportunity, we direct that all parties concerned will maintain status-quo for a period of four weeks and the order will not be acted upon during these four weeks.

H.L. GOKHALE, J

A.S. OKA, J